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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/588,503	08/04/2006	Hajime Ishii	H&C-5244	7213

7590 12/05/2007
Mattingly Stanger & Malur
Suite 370
1800 Diagonal Road
Alexandria, VA 22314

EXAMINER

BLACK, MELISSA ANN

ART UNIT	PAPER NUMBER
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3612

MAIL DATE	DELIVERY MODE
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12/05/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/588,503

Applicant(s)

ISHII ET AL.

Examiner

Melissa A. Black

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 August 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1, line 20-21, it is unclear how the holder member is part of the folding type door as well as the catch member of lines 23-24 being part of the folding type door. If they are both on the door then how do they connect? The claims should read that the left rear side member is provided with the catch member.

Claim 5, is indefinite due to claim language, it is narrative in the last two line. Also it is undeterminable the view taken by the operator for they may be tall or short, and may be capable of turning around further than someone else.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any

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evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 1, 2 and 4-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 11100864 to Tanaka Hisao in view of US Pat # 6,502,896 to Nakata et al.

Re Claim 1, Hisao discloses a construction machine comprised of an automotive vehicular lower structure, and an upper revolving structure rotatably mounted on said vehicular lower structure and having a cab built on a frame and covering lower side of said cab with a side cover; said cab being constituted by a hollow cab box having five vertically extending pillars including a left front pillar (25), a right front pillar (not shown), a left center pillar (27), a left rear pillar (26) and a right rear pillar (not shown), and five side sections between said pillars including a front side section, a left front side section, a left rear side section, right side section and a rear side section, and a door openably or closeably fitted between said left front pillar and said left center pillar (See Figure 3), characterized in that: said door is a folding type door (32, 34) pivotally (36) supported on said left center pillar (27) of said cab box and constituted by a couple of flexibly connected door panels (32, 34); said folding type door being located substantially in the same vertical plane as said side cover (See Figure 1); said left rear side section being provided with a holder member (40) for retaining said folding type door in an open door position when said folding type door is opened; and said folding type door being provided with a catch member (41) to be attachably or detachably engaged with said holder member (40) on said left rear side section of said cab box when said folding type door is in an open door

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position. Re Claim 2, Hisao discloses the construction machine, wherein said left rear side section of said cab box is formed in a convex arcuate shape (See Figure 1) from said left center pillar (27) to said left rear pillar (26), and said folding type door is folded back along said left rear side section of said cab box when opened (See Figure 1). Re Claim 5, Hisao discloses the left rear pillar of said cab is located at a position behind an operator's seat within said cab, clear of a rear view taken by an operator (See Figure 1).

Re Claims 1 and 4, as discussed above Hisao discloses one holder and one catch on the second door panel, but fails to disclose the use of a catch and holder for use on the first door panel.

Nakata et al discloses the use of a catch and holder (36 and 41) on the first door panel (32).

It would have been obvious to one with ordinary skill in the art to use the catch and holder on the first door panel as taught by Nakata et al on the device of Nisao in order to prevent the first folding door panels from rattling off the left rear side section of the cab box and make the panel follow along with the curve of the side section. Furthermore, it is a mere duplication of parts and involves only routine skill in the art.

6. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over JP 11100864 to Tanaka Hisao as modified by US Pat # 6,502,896 to Nakata et al in view of US Pat # 6,669,272 to Ayabe et al.

Hisao as modified, fails to disclose the use of a stretchable protective cover to cover the gap between the two door panels of the folding door type.

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Ayabe et al discloses the use of a stretchable protective cover to cover the gap between the two door panels of the folding door type (27, Figure 10(a)).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to include the cover member as taught by Ayabe et al on the device of Hisao in order to protect the inside of the cab from the elements, and prevent objects from being pinched in-between the panels of the folding type door.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US Pat # 6,471,260 discloses a simple spring catch.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melissa A. Black whose telephone number is (571) 272-4737. The examiner can normally be reached on M-F 7:00-3:30 ET.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Dayoan can be reached on (571) 272-6659. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Dennis H. Pedder
DENNIS H. PEDDER
PRIMARY EXAMINER
Ho 3612
12/4/07